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VIA ECF

The Honorable Judith McCarthy
U.S. Magistrate Judge, Southern District of New York
300 Quarropas St.
White Plains, New York 10601-4105

Re: Terry Keebaugh v. IBM Corp., Case No. 7:18-cv-12126 (CS) (JM)

Dear Judge McCarthy:

During meet and confer discussions, Keebaugh demanded that IBM produce its ESI production from another case, Langley v. IBM (W.D. Tex., Dkt. 18-cv-443). Keebaugh demands this production, totaling 155,000 pages, based on an argument from the Langley plaintiff in a court filing there that “some of those documents” supported his theory that IBM had a goal to rebalance the age of its workforce. But the Court should determine the scope of discovery based on the discovery requests, arguments and evidence in this case and not on an argument from a plaintiff in another case. *Goro v. Flowers Foods, Inc.*, 2019 WL 6252499, at *18 (S.D. Cal. Nov. 22, 2019) (“Asking for all documents produced in another matter is generally not proper” and “definitionally unduly burdensome”).

Discovery here is ongoing and Plaintiff should be required to stick to it for her discovery needs. Specifically, on September 23, 2019, IBM served its ESI proposal and the bulk of its ESI responsive to the Court’s August 30, 2019 Order (Dkt. 44) and said that it was available to meet and confer over any remaining ESI requests. Nearly four months later, Keebaugh made her supplemental ESI request. On January 22, 2020, at the last status conference, IBM indicated that it needed time to review the new proposal, which was voluminous. On Tuesday, IBM provided

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an ESI counterproposal and indicated that it expected to supplement its document production by the end of next week. IBM's counterproposal and supplemental production are based on the record developed here and the Court's August 30, 2019 Order requiring production related to the development and implementation of the 35% goal that the Court found relevant (Dkt. 44, at 2).

The ESI in Langley, in contrast, was not tailored to the development or implementation of the 35% goal, as Langley involves a different layoff program and business unit. Indeed, the ESI requested in Langley largely was not even tailored to that case. It included extremely broad search terms like "fall plan," "Bain" and "retired," and IBM was ordered to produce all documents hitting on a search term regardless of whether they were relevant or responsive. Unsurprisingly, the 155,000 pages includes many thousands of wholly irrelevant documents, such as communications regarding executives' medical issues, business deal negotiations, and recruitment of Board of Directors candidates.

Moreover, to the extent any documents contained within the Langley ESI pertain to the 35% goal, IBM's Counterproposal's search terms are reasonably formulated to capture them. The Langley ESI included two custodians who Keebaugh claims are relevant, and IBM's ESI counterproposal here includes terms for both. The parties are just starting to discuss IBM's counterproposal, but even if a dispute were to arise and the Court were inclined to order additional production, the appropriate remedy would be supplementation of discovery responses in this case and not an order to produce overbroad set of ESI from another case, which would be grossly disproportionate to any legitimate needs here. And it would be inefficient, burdensome and would further delay depositions for the parties to now switch gears and confer over production of some subset of the 155,000 pages of Langley ESI.

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Very truly yours,

/s/ Matthew W. Lampe
Matthew W. Lampe

cc: All counsel